IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2365 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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JAYDEEPSINH TEJUBHA SOLANKI & 1 - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NA SHASTRI for Applicant(s) : 1 - 2.
MS HANSA PUNANI, A.P.P. for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/03/2007

ORAL JUDGMENT

1. By way of this application the applicants have prayed for quashing and setting aside the complaint lodged before Sabarmati Police Station, Ahmedabad, on 04.01.2007 bearing F.I.R. No. I-2/2007 punishable under sections 406, 420, 506(1) and 114 of the Indian Penal Code.

2. The short facts of the case are that a complaint is lodged before the Sabarmati Police Station,

Ahmedabad by one Kamuben wife of Chandulal Chimanbhai Raval who is the agent of the Gurukrupa Mitra Mandal. The said firm is registered partnership firm bearing Registered No. GUJ/AMS/32709 dated 15.05.1996. The business of the said firm is leasing finance and conducting lucky draws and entertainment programs. The essence of the complaint is that they have cheated the public through their activities.

3. Learned advocate for the applicants has submitted that the ingredients of the Section 406 and 420 of the Indian Penal Code would not be attracted to the facts of the present case and there is no prima facie case against the present applicants.

4. Heard. I have gone through the documents placed in this connection it would be relevant to refer to a decision of the Apex Court in the case of ***R.P. Kapur V. State of Punjab, reported in AIR 1960 SC 866.*** Para 6 of the said decision reads as under:

> ***"Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under S. 561-A of the Code. The said section saves the inherent power of***

the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the high Court can be exercised to quash proceedings in a proper case wither to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High

Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings and that is the effect of the

judicial decisions on the point."

5. The Apex Court in the case of State of ***Haryana and others V. Bhajan Lal and others, reported in 1992 Supp(1) SCC 335*** has broadly set out the circumstances in which this Court can exercise the power under section 482 of Criminal Procedure Court. Paragraphs 102 and 103 thereof read as under:

> ***"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised***
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> ***(1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.***
> ***(2)Where the allegations in the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.***
> ***(3)Where the uncontroverted allegations made in the FIR or complaint and the***

evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5)Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It is made clear that the applicants are involved in the said offence punishable under section 406, 420, 506(1) and 114 of the Indian Penal Code. The allegation is that they have cheated the public through various schemes. Therefore this court is not

inclined to exercise its discretionary power under section 482 of the Cr. P.C. In that view of the matter the application is required to be dismissed.

6. In view of the above, this application is dismissed.

(K.S.JHAVERI,J.)

Suresh*